

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CHIQUITA L. MCKINNES,

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Plaintiff,

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v.

*** CASE NO.: 2:06-cv-00550-WHA-VPM**

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JOHNSON & JOHNSON, INC., et al.

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Defendants.

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PLAINTIFF'S MOTION TO REMAND

COMES NOW THE PLAINTIFF, Chiquita L. McKinnes, by and through her counsel of record, and respectfully request this Court to remand the above cause to the Circuit Court of Barbour County, Alabama. Johnson & Johnson, Inc., Johnson & Johnson Pharmaceutical Research and Development, L.L.C., Ortho-McNeil Pharmaceutical, Inc., Brad Morrow and Jamie Forbes (hereinafter referred to as "The Defendants") have failed to establish that this cause falls under the jurisdiction of the federal courts. Plaintiff brings this motion pursuant to 28 U.S.C. § 1447, and in further support hereof, state as follows:

1. This Court lacks jurisdiction over this matter, in that the Court could not have had "original" jurisdiction over this matter, had the Plaintiff elected to file the cause in federal court, as required by 28 U.S.C. § 1441.

2. This cause does not present any federal questions which would invoke this Court's jurisdiction over these proceedings, as permitted by 28 U.S.C. § 1331. State law predominates over the issues in this cause.

3. Furthermore, two of the named Defendants share the same state citizenship as the Plaintiff. Plaintiff and Defendants, Brad Morrow and Jamie Forbes, are residents of the State of Alabama. As such, complete diversity of citizenship, as mandated by 28 U.S.C. § 1332, is absent.

4. The Defendants assertion that the Plaintiff has fraudulently joined the in-state, individual Defendant is without merit and is unsupported by the evidence in this cause. Plaintiff in her state court complaint has averred viable claims under Alabama law against all Defendants. All Defendants are properly joined to this action. The Defendants have failed to show that Alabama residents, Brad Morrow and Jamie Forbes, are fraudulently joined by the Plaintiff for the purpose of defeating federal jurisdiction.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand, Plaintiff urges the Court to remand this action to the Circuit Court of Barbour County, Alabama.

Respectfully submitted this 23rd day of June, 2006.

/s/ WESLEY CHADWICK COOK
JERE L. BEASLEY (BEA020)
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the parties
as listed below by placing a copy of same in the United States Mail, first class postage
prepaid, on this the 23rd day of June, 2006.

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